



UNDERRATING ELECTORAL CRIMES AT THE RISK OF EPILEPTIC MARCH TOWARDS FREE AND FAIR ELECTORAL PROCESS*1

Abstract

Constitutionally based democratic system of representative government only works when the worth of honest ballots is not diluted by invalid ballots procured by illegal means. When the election process is corrupted, democracy is jeopardized. This underscores the need to accord enforcement priority and effective prosecution of corruption of the election process. Electoral crime is more grievous and affects the society more than ordinary crime. The victim of an assault is the person assaulted. It may have only a collateral and remote effect on the society. But an act or omission or violence on a person or group of persons with intention to stop them from exercising their electoral rights discourages people from participating in the electoral process. This may lead to apathy towards elections and emergence of the wrong persons as the custodian and managers of the commonwealth. Since the commission of electoral offence has multiple effects; both on the direct victims who may lose their lives or become permanently incapacitated or erosion or demeaning of the corporate political rights, the Electoral Act should not merely provide against it but provide more penal sanctions than the provisions under ordinary statutes. The focus of this paper is on the need to strengthen the mechanism for enforcement of penal sanctions on electoral offenders. A distinct and bespoke court or commission should also be established to determine cases of electoral crimes.

Keywords: Election, Crime, Electoral Rights, Democracy

1. Introduction.

Electoral offences are unlawful or wrongful acts or omissions obstructing the implementation of constitutional and legal principles for free and democratic elections committed intentionally and are statutorily stated as infractions related to the electoral process. Three paradigms are discernible from this definition;

- a. unlawful or wrongful acts or omissions,
- b. intention to obstruct or undermine the electoral process,
- c. statutorily stated.

Actions carried out in order to commit these criminal offences consist in the use of force, threat, bribery, the abuse of economic and professional dependence and other unlawful actions. These are the actions that may affect the result of an election and which endanger the democratic election system. The electoral jurisprudence should provide the mechanisms for effective remedies to protect those rights.

Electoral offences are predominantly punitive, as they do not correct or annul the effects of an electoral irregularity or wrongful conduct but merely punishes the person responsible for the criminal offence or administrative infraction. It therefore constitutes an indirect mechanism for ensuring that elections comply with the legal framework. However, the penal system should not create a forum for politically motivated and unsubstantiated charges against opponents. Sanctions and penalties should also be proportionate punishment for the conduct that resulted in the harm.

The regime of electoral liabilities is divided into administrative infractions and criminal offences. Both are usually classified on the basis of:¹

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¹J Orozco-Henríguez et al (eds) *Electoral Justice: The International IDEA Handbook* International Institute for Democracy and Electoral Assistance (Stockholm 2010) p 41 para 99.



- a. The values or legal interests protected: (e.g., freedom of the ballot or fair conditions in the electoral contest). It is often the more fundamental values that are protected by criminal statutes.
- b. The types of sanction that can be imposed: imprisonment is commonly used for a criminal offence as a way of punishing a person convicted of a serious criminal offence. The penalty for administrative electoral infractions does not entail any loss of liberty, but may for example take the form of a financial sanction, the suspension or loss of a political party's registration or the cancellation of a candidacy.
- c. The nature of the active subjects or persons responsible: legal entities, such as political parties, are not usually subject to imprisonment on incurring criminal liability, although this is no impediment to the imposition of an administrative sanction.
- d. The procedures used to inquire into whether certain conduct constitutes an administrative infraction or a crime: the procedures on administrative infractions are generally the responsibility of Electoral Monitoring Bodies (EMBs), while criminal offences are prosecuted by the public prosecutor or an equivalent authority.
- e. The organs with the authority to adjudicate on whether an electoral crime or infraction has been committed and to impose the appropriate sanction: in non-common law countries, administrative sanctions are generally imposed by the EMB or a civil or administrative law court; criminal penalties are however imposed by the criminal courts.

Despite these basic differences, regimes for administrative liability and criminal liability have some common characteristics. Based on the principle of *ius puniendi*, which encapsulates the punitive or sanction-imposing powers of the state, there can be no crime or infraction without a punishment or sanction having been provided for in the applicable written law. In this respect, the following principles or guarantees should be applied in every case of criminal or administrative responsibility:

- a. The definition of a criminal offence or administrative infraction and the sanction or penalty to be applied for committing it must be determined by law before the crime or infraction is committed. Retrospective legislation should not be permitted. The EMBs and judicial bodies entrusted with the proceedings or trials to determine the facts and rule on them do not have the power to create new classes of administrative infraction or crime, since this falls within the exclusive power of the legislative body.
- b. The legal provision that establishes an administrative infraction or criminal offence and the corresponding sanction or penalty should embody the principles of certainty and objectivity. This means that it should be stated in writing in an abstract, general and impersonal manner, so that it is clear what conduct is regulated or prohibited and what the legal consequences of a breach are.
- c. The provisions setting out the sanction or punishment need to be interpreted and applied strictly. The principle of legality requires that no argument by analogy should be applied, nor should the argument of 'common sense' be applicable. The use of such arguments would lead to uncertainty as to what conduct or omission is punishable and what is not.
- d. In order to increase the likelihood of compliance, it is advisable for the electoral law to provide for the sanctions imposed on political parties to be independent of the liability that may attach to their leaders, members, candidates or supporters.
- e. It should be determined whether criminal prosecution is the appropriate remedy for the allegations and facts presented. Criminal prosecution is most appropriate when the facts demonstrate that the defendant's objective was to corrupt the process by which voters were registered, or by which ballots were obtained, cast, or counted.



2. Administrative Infractions of the Electoral Process.

Administrative infraction of an electoral process is wrongful, but not criminal conduct by which a person breaches or violates the electoral regime, defined by the electoral law or included in a law on some other administrative functions. It gives rise to the imposition of a sanction that does not entail the deprivation of liberty. Such infractions are usually investigated by the Electoral Monitoring Body (EMB).²

Administrative infractions can be incurred through:

- a. breach by a political party, political grouping or candidate of its legal obligations and of the decisions of the electoral authority;
- b. wrongful actions by supporters of candidates or political parties;
- c. failure by parties to report where funds come from and how they are used;
- d. accepting gifts and financial contributions of unlawful origin;
- e. accepting gifts or contributions that exceed the legal limits;
- f. spending more than the amounts authorized for campaigns;
- g. breach by citizens or other individuals of the rules for electoral observation;
- h. failure by the media to transmit the messages of the political parties at the official time or to comply with legal provisions regarding the volume and content of coverage related to the electoral process;
- i. a breach by electoral officials of their obligations provided for by law
- j. an electoral official, public employee or religious or community leader offering inducement to vote for or against a particular candidate or political party, or to refrain from voting.

Administrative sanctions can be imposed by the Independent National Electoral Commission (INEC), after a proceeding that takes the form of a fact-finding process, the result of which may be challenged before a court. Administrative sanctions can be in the form of:

- a. reprimand, suspension, removal or disqualification of a public employee or electoral official;
- b. reprimand, suspension or cancellation of a political party's or political grouping's registration;
- c. reductions in public financing for a political party;
- d. suspension of a political party's officially allotted radio and television time for political advertising or political messages;
- e. suspension of air time for radio and television broadcasts;
- f. loss or cancellation of the right to register as a candidate;
- g. cancellation of accreditation as an election observer; or
- h. fines or other financial penalties.

Administrative sanctions can be imposed on voters, aspirants, candidates, or election observers; general public employees or public employees of INEC. Leaders of political parties, political parties or political groupings, election observers; religious or community leaders or media organizations, may also commit administrative electoral infractions.

The purpose of defining and therefore regulating the legal conditions for the application of the electoral law, and the sanctions applicable to electoral administrative infractions, is essentially to protect the values and legal interests to be attained or realized by the exercise of electoral rights.³

3. Electoral Crimes

Electoral crime is not a new phenomenon. In ancient democratic climes and times, it was necessary to punish conduct that represented an attack on public functions or on the free expression of the vote.

² Ibid, p 48 para 115.

³ Ibid, p 48 para 119.



For example, the ancient Greeks applied death penalty to a citizen who voted twice or who bought or sold a vote; the Romans issued the *Lex Julia de Ambitu*, which punished the use of unlawful means for obtaining access to public office. Later *broglio* appeared in Rome, which nowadays could be translated as electoral fraud or vote-buying.⁴

Electoral Crimes consist of positive or negative actions or omissions made unlawful and punishable by statute through criminal sanctions. The state defines these in legal provisions prohibiting such conduct and establishes a sanction in cases where such conduct takes place, often a penalty that entails deprivation of liberty. The essential purpose of defining and imposing sanctions for electoral crimes or offences is to protect the values and legal interests that are intended to be attained or realized through the exercise of electoral rights, that is, the individual's right to participate in the conduct of public affairs through elections.

The law governing electoral processes also encourages compliance with its provisions through a regime of criminal or administrative liability for election-related matters, constituted by the full set of sanctions applicable to those responsible for crimes related to electoral processes. This regime is predominantly punitive, as it does not correct or annul the effects of an electoral irregularity or wrongful conduct but merely punishes the person responsible for the criminal offence. It therefore constitutes an indirect mechanism for ensuring that elections comply with the legal framework. However, the penal system should not create a forum for politically motivated and unsubstantiated charges against opponents. Sanctions and penalties should also be proportionate punishment for the conduct that resulted in the harm.

3.1 Codification of Electoral Crimes

There are two possible approaches to the codification of electoral crimes or offences with regard to where such provisions should be situated in the national legal system. The first favours such offences being included in the penal or criminal code. Situating electoral offences in the Penal or Criminal code protects the offences or crimes from constant changes that are prevalent in electoral law.⁵ The alternative approach is for electoral crimes or offences to be allowed to evolve with the dynamics of elections. In this case it is better to incorporate them in the electoral law so that they can be revisited whenever the general legal framework governing elections is changed in order to maintain consistency between the substantive electoral law and the punitive electoral law.

Furthermore, the historical and socio-political context of each country should be considered while determining and defining electoral crimes and offences. A country's political culture and electoral practices may influence whether conduct is deemed unacceptable because it is at odds with principles such as liberty or equality, and thus should be prohibited, or whether it is considered to be in accordance with such principles and therefore permitted. Such notions may also vary in the same country over time. In some parts of Nigeria where offering of 'kola' to visitors and sometimes by visitors to special guests, criminalising such conduct may not be as justifiable as it would appear in other jurisdictions. Similarly, while it may be unnecessary to criminalise transporting voters to polling units by parties or candidates in Nigeria because the INEC Guidelines restrict movements on election days, it may be otherwise in some countries where such restrictions do not exist and voters have to travel long distances on the election day to cast their ballots.

Another factor to consider in defining electoral offences is the focus of the country or more technically speaking; the mischief the law intends to cure. A country may focus on the perpetrators

⁴J Orozco-Henríquez et al (eds) *Electoral Justice: The International IDEA Handbook* International Institute for Democracy and Electoral Assistance (Stockholm 2010) p 43 para 104

⁵ In a space of 20 years, the Electoral Act in Nigeria has been revised about 5 times while the substantive Criminal and Penal Codes have not been touched except for the procedural laws in the Administrative of Criminal Justice Act and Laws of some states.



of the criminal conduct, such as citizens, election officers, party leaders, and so on while another country will be aspiring towards protecting some legal interests like freedom of the vote or equal conditions for all candidates. The body of law in which an offence is included or the criterion used to regulate it are less important than the existence of a proper legal framework on electoral crimes or offences that helps to ensure that elections are free, fair and genuine.

3.2 Forms of Electoral Offences

Electoral offences can be in the form of electoral fraud, voter coercion, obstructing the electoral process, crimes or offences against voter registration or unlawful or wrongful campaign financing.

1. Electoral Fraud: Electoral fraud can be committed in the following ways:

- a. Voting without complying with legal requirements.
- b. Voting more than once in a single election
- c. Knowingly allowing fraudulent behaviour on the part of the electorate
- d. Committing impersonation or using documents that are not an elector's own to vote.

These kinds of offences can be committed by the electorates, electoral officials and indeed anyone.

2. Voter coercion: this can be committed by:

- a. Propagating false news regarding Election Day or results.
- b. Requiring subordinates to vote in a certain way.
- c. Making provision of a public service conditional on citizens' voting in a certain way
- d. Bribery through gifts or money to voters, or promises of such
- e. Placing undue pressure on citizens to vote a certain way or not vote at all
- f. Exercising pressure or engaging in campaigning inside the polling station
- g. Violating the secrecy of the vote or the right to cast a vote freely
- h. Disseminating results of opinion polls outside the period allowed by law

These offences can be committed by electoral officials, party officials, public servants and indeed anyone.

3. Obstructing the electoral process: the electoral process can be obstructed by:

- a. Depriving someone of right to vote.
- b. Taking possession of electoral materials.
- c. Depriving someone of right to vote.
- d. Interfering with the normal conduct of the voting; unduly collecting voters' credentials; altering electoral documents or impeding the installation of a polling station.
- e. Impeding the lawful exercise of rights by political party representatives at the polling station.
- f. Unlawfully taking ballot papers from the ballot boxes.
- g. Altering election results or documents, impeding their timely delivery, or opening or closing a polling station outside the legal time frames.
- h. Failing to carry out obligations particular to their post.
- i. Taking possession of electoral documents or materials.
- j. Obstructing the normal course of the voting.
- k. Impeding the opening or closing of a polling station,
- l. Depriving someone of right to vote.
- m. Interfering with the normal conduct of the voting; unduly collecting voters' credentials; altering electoral documents or impeding the installation of a polling station.
- n. Impeding the lawful exercise of rights by political party representatives at the polling station.
- o. Unlawfully taking ballot papers from the ballot boxes.
- p. Altering election results or documents, impeding their timely delivery, or opening or closing a polling station outside the legal time frame.
- q. Providing false documents to or inputting false data into the electoral register in order to obtain a voter registration card.



- r. Destroying or altering voter registration documents or voter registration cards.
These offences can be committed by electoral officials, party officials or by anyone
4. Crimes or offences against voter registration can be committed by:
- a. Improperly replacing or altering voter registration documents
 - b. Providing false documents to or inputting false data into the electoral register in order to obtain a voter registration card
 - c. Destroying or altering voter registration documents or voter registration cards
These can be committed by electoral officials and by anyone else.
5. Unlawful or wrongful campaign financing can be committed by party leaders or candidates and by public servants through:
- a. Making a false declaration on election expenses incurred
 - b. Illegally supporting a political party or its candidates through directing subordinates to campaign during working hours, or illegally earmarking property or funds to provide such support
 - c. Using funds raised through unlawful activities for political campaigns
 - d. Illegally earmarking property or funds to provide support
 - e. Making use of funds unlawfully given by a public servant

The Nigerian Electoral Act provides for electoral offences affecting the conduct and activities of voters, political parties and INEC officials. The offences relate to registration,⁶ nomination of candidates,⁷ disorderly behaviour at political meetings,⁸ improper use of voters cards,⁹ improper use of vehicles,¹⁰ impersonation and voting when not qualified,¹¹ dereliction of duty,¹² bribery and conspiracy,¹³ violation of the requirement of secrecy in voting,¹⁴ wrongful voting and false statements,¹⁵ voting by unregistered persons,¹⁶ disorderly conduct at elections,¹⁷ offences on election days,¹⁸ applying undue influence,¹⁹ and using threat on voters.²⁰

Besides the offences listed in Part VII of the Electoral Act, there are offences related to the voters' register and voters' registration. Since the proprietary right in the voters card vests in the commission,²¹ it cannot be unlawfully issued/replaced²² or possessed²³ neither can it be sold²⁴ or bought.²⁵

⁶ Electoral Act 2022 Section 114, Section 12(2) and (3) and Section 23.

⁷ Ibid, Sections 30(3), 115.

⁸ Ibid, Section 116.

⁹ Ibid, Section 117.

¹⁰ Ibid, Section 118.

¹¹ Ibid, Section 119.

¹² Ibid, Section 120.

¹³ Ibid, Section 121.

¹⁴ Ibid, Section 122.

¹⁵ Ibid, Section 123.

¹⁶ Ibid, Section 124.

¹⁷ Ibid, Section 125.

¹⁸ Ibid, Section 126.

¹⁹ Ibid, Section 127.

²⁰ Ibid, Section 128

²¹ Ibid, Section 21

²² Ibid, Section 18(3).

²³ Ibid, Section 22(a); s 16(2)

²⁴ Ibid, Section 22(b).

²⁵ Ibid, Section 22(c).



3.3 Offences of INEC Officials.

The INEC officials can also be held criminally liable for their wrongful acts or omissions. Where a presiding, collation officer or any other person designated by INEC to perform electoral functions violates any of the provisions for counting, recording, signing, stamping, announcing, transferring the result and giving copies thereof to the police officer and polling agents, he shall be liable to an offence.²⁶ The officer also commits an offence where he announces the result of an election for which he did not record the quantity, serial numbers and other particulars of the result sheet and other sensitive materials supplied to him by the Commission for the conduct of the election.²⁷

A Resident Electoral Commissioner who fails to issue a certified true copy of any document used for an election within 14 days of an application made by any of the parties to the election is liable to an offence.²⁸

3.4 Aspirant, Candidate and Political Party Offences

The Act also provides for offences related to the activities of political parties, candidates, individuals and relevant organisations, particularly with regards to election expenses, conduct at political rallies, processions and political campaign. They can commit electoral offences in the following ways:

1. Political associations and their principal officers shall be liable to an offence if while applying for registration as a political party they furnished false or misleading information to the INEC.²⁹
2. While the Constitution of Nigeria, 1999 in Section 227 admonishes against retention, organisation, training or equipping any person or group of persons for the purpose of enabling them to employ, use or display of physical force or coercion in promoting any political objective or interest or in such manner as to arouse reasonable apprehension, the Electoral Act criminalises such actions.³⁰
3. Where a political party fails to provide information requested by INEC to clarify any activity that is suspected to be contrary to the provisions of the Constitution, law, guidelines, rules or regulations made pursuant to an Act of the National Assembly or neglects to carry out any directive in relation thereto, it is liable to an offence.³¹
4. Holding or possessing any fund or assets³² or retention of any fund or assets³³ from outside Nigeria by a political party in contravention to Section 225(3) (a) and (b) of the constitution constitute offences.
5. Officials of a political party that fail to submit a detailed annual statement of assets and liabilities and analysis of its sources of funds, assets and expenditure are liable to an offence.³⁴
6. A political party or candidate that receives an amount of money or an asset from an individual beyond a limitation placed by the INEC is liable to an offence. The individual who made the excess contribution is also liable to an offence.³⁵
7. Candidates³⁶ and individuals³⁷ who exceed the election expenditure ceiling under the Act are liable to offences.

²⁶Ibid, Section 60.

²⁷ Ibid, Section 73(3).

²⁸ Ibid, Section 74.

²⁹ Ibid, Section 75(5)

³⁰ Ibid, Section 78.

³¹ Ibid, Section 83(4).

³² Ibid, Section 85(a).

³³ Ibid, Section 85(b).

³⁴ Ibid, Section 86(1) and (2).

³⁵ Ibid, Section 87(2).

³⁶ Ibid, Section 88(9).

³⁷ Ibid, Section 88(10).



8. An accountant who falsifies, aids or conspires to aid a candidate with regards to election expenses or donation towards an election is liable to an offence.³⁸
9. Political parties that exceed the election expenses determined by INEC in consultation with the political party is liable to an offence.³⁹ Failure to submit the report of election expenses by a political party amounts to an offence.⁴⁰
10. Contravention of the prohibitions on certain conduct in political campaigns by a political party, aspirant or candidate amounts to an offence.⁴¹
11. The Act also prohibits and criminalises the threat of use of force or violence during political campaigns by parties, candidates, persons or group of persons.⁴²
12. Campaigning through advertisement or publication in broadcasting undertaking or in a newspaper, 24 hours prior to the day of polls by political party is an electoral offence.⁴³

Candidates for elections can be held liable for electoral offences committed directly by him or through his agents with his express or tacit approval. Candidates cannot be held accountable for acts of confusion, intimidation, violence and corrupt practices perpetrated by others who were on frolics of their own.⁴⁴ A candidate can thus only be held liable for an electoral offence if it was committed with his knowledge and consent.⁴⁵

3.5 Media Based Offences

Regulation of media during elections can be a complicated subject due to the need to balance the rights of voters to receive information, the rights of candidates and political parties to convey political messages and rights of media to exercise the freedom of expression. Voters have the right to receive information from candidates and political parties in order to effectively exercise the right to vote. The right of voters 'to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice'⁴⁶ is particularly applicable during elections.

The right to communicate political messages by candidates and political parties through campaign platforms and views can be done in a variety of media formats and through different ways of communication and coverage. It is important that candidates and political parties 'have an equal opportunity to inform voters about their policies and not face discrimination in getting media access.'⁴⁷ The media have the right to inform the public about the election campaign and to express opinions. They also have the right to cover the candidates, political parties, campaign issues, the work of the election administration, problems and incidents arising during the campaign, events on election day and the announcement of election results.

The assessment of legal provisions for media regulation requires consideration of the provisions in their totality without undue focus on a single provision, due to the number of fundamental rights involved. Apart from the election laws there are other laws guiding dissemination

³⁸ Ibid, Section 88(11).

³⁹ Ibid, Section 89(2) and (7).

⁴⁰ Ibid, Section 89(4).

⁴¹ Ibid, Section 92(7).

⁴² Ibid, Section 93(2).

⁴³ Ibid, Section 94(2).

⁴⁴ *Adeola v Owoade* (1999) 9 NWLR (Pt 617), p 30; *Falae v Obasanjo (No. 1)* (1999) 4 NWLR (Pt 599) p 435; *Buhari v Obasanjo* (2005) 50 WRN 1

⁴⁵ Ibid, Section 121(6); *Waziri v Geidam* (2016) 49 WRN 1 at p 30 lines 40-45 per Mary Peter-Odili JSC

⁴⁶ International Covenant on Civil and Political Rights", United Nations General Assembly, 16 December 1966, art 19

⁴⁷ Handbook on Media Monitoring for Election Observation Missions (Warsaw: OSCE Office for Democratic Institutions and Human Rights, 2012), p 14.



of information under the criminal and civil laws, infraction of which may lead to actions in criminal or civil defamation. Further, the increased in the use of the internet and new media technologies in elections is an evolving area of legal regulation and impacts on media regulation on election processes and coverage of campaigns, activities of the Election Monitoring Bodies, political parties and candidates for elections.

The Electoral Act, 2022 enjoins state apparatus and media and other media houses to give equal opportunity and access to candidates and political parties without discrimination. It provides that:

- a. State apparatus including the media shall not be employed to the advantage or disadvantage of any political party or candidate at any election.⁴⁸
 - b. Media time shall be allocated equally among the political parties or candidates at similar hours of the day.⁴⁹
 - c. At any public electronic media, equal time shall be allotted to all political parties or candidates during primetimes at similar hours each day, subject to the payment of appropriate fees.⁵⁰
 - d. At any public print media, equal coverage and visibility shall be allotted to all political parties.⁵¹
- The punishment section of the Act provides that any person who contravenes subsections (3) and (4) commits an offence and is liable on conviction, in a case of-
- a. Public media, to a fine of ₦2,000,000 in the first instance and ₦5,000,000 for subsequent conviction;⁵² and
 - b. Principal Officers and other officers of the media house, to a fine of N1, 000,000 or imprisonment for a term of six months.⁵³

The reference to public media applies to all organisations engaged in public communication reaching a large audience. The word 'public' does not exclude private organisations engaged in the business of mass media communication. Any broadcast made to promote or oppose a particular political party within 24 hours preceding a polling day contravenes section 96(1) of the Electoral Act. Liability for this offence applies to both corporate bodies, principal officers of such bodies and individuals.⁵⁴

3.6 Tribal or Religion based Campaign.

Any candidate, person, association or political party that promotes or opposes a particular political party on religious, tribal or sectional bases commits an offence.⁵⁵

3.7 Absentee Ballot Frauds

Absentee ballot frauds involve the corruption of absentee voting transactions through such means as bribery, forgery, intimidation, and voter impersonation. These acts can be investigated by:

- a. identifying specific fraudulent voting transactions,
- b. interviewing voters who were corrupted or defrauded,
- c. using these persons as witnesses to prosecute those who corrupted or defrauded them,
- d. getting the suspects to make cases against higher level targets.
- e. analysing election documents.

⁴⁸ Ibid, Section 95(2).

⁴⁹ Ibid, Section 95(3).

⁵⁰ Ibid, Section 95(4).

⁵¹ Ibid, Section 95(5).

⁵² Ibid, Section 95(6)(a).

⁵³ Ibid, Section 95(6)(b).

⁵⁴ Ibid, Section 96(2) and (3).

⁵⁵ Ibid, Section 97.



- f. Identifying similar transactions.
- g. Interviewing voters allegedly involved determining whether they voted, and if so, under what circumstances (for example, whether they were paid, intimidated, or not consulted).
- h. comparing handwriting of subjects: Handwriting of persons suspected of forging absentee ballot documents should be obtained and compared with the handwriting on those questioned documents
- i. developing multiple witnesses: Voters involved in fraudulent voting transactions are usually poorly educated, often intimidated by defendants and courtrooms, and generally may not make strong witnesses. Successful prosecution of this type of case normally requires the testimony of several voter-witnesses.

3.8 Ballot-Box Stuffing Cases

Ballot-Box Stuffing Cases involve the insertion into ballot boxes of invalid, fraudulent, or otherwise illegal ballots. All ballot-box stuffing schemes necessarily involve poll officials, since access to voting documents is essential to this type of fraud. Ballot-box stuffing investigations seek to identify fraudulent voting transactions and to link specific poll officials to them. The general investigative methodology is to:

- a. Obtain and examine the poll lists or other documentation that voters sign when entering the polls; the registration cards for voters residing in the target precinct, any paper or punch card ballots, and any tally sheets prepared by the poll officials reporting the election results. These very factors, on the other hand, demonstrate the susceptibility of these persons to manipulation, which is often important evidence in the case.⁵⁶
- b. Examine election documents for similar handwriting, giving special attention to names entered at times when voting activity was slow (such as mid-morning and early afternoon) and shortly before the polls closed.
- c. Compare voters' signatures on the poll list with corresponding permanent registration cards to identify voters who may not have cast the ballots attributed to them.
- d. Take handwriting patterns from each poll official having access to the ballot box, and then compare them with questionable signatures of alleged voters.
- e. Interview voters whose ballots were used in the scheme to determine whether they voted at the polls, and, if so, under what circumstances.

There are several reasons why election crime prosecutions may present an easier means of obtaining convictions than do other forms of public corruption. Some of them are based on the fact that election crimes:

- a. usually occur largely in public.
- b. often involve many players. For example, successful voter bribery schemes require numerous voters; ballot box stuffing requires controlling all the election officials in a polling location; and illegal political contributions generally involve numerous conduits to disguise the transaction.
- c. tend to leave paper trails, either in voting documentation or in public reports.

There are good reasons while electoral offences should be effectively prosecuted. Firstly, it helps to annul the presupposition that elections are supposed to be bought and the only reason to go to the polls is for electors to get their pay off. It reduces the tendency of political parties and candidates targeting poor, handicapped, addicted and uneducated voters to carry out their scheme to secure public office.

⁵⁶ Electoral Act 2022, Section 146.



Secondly, it reduces political corruption by altering the belief of voters that selling their vote is not wrong but the norm and finally reduces the utter hopelessness and apathy in the people towards the democratic process.

4. Electoral Violence.

The separate discussion of electoral violence is necessary to the extent that unlike the other offences which impinge directly on the integrity of the electoral process and undermine the authority and power of the sovereign state, electoral violence affects the rights, lives and property of individuals. Electoral violence can cause deaths, permanent incapacity, physical or psychological injury to victims or loss of property.

Conceptually, 'electoral violence', can be defined in terms of scope and context to mean the 'overt physical violence and coercive intimidation directly tied to an impending electoral contest or to an announced electoral result.'⁵⁷ A more encompassing definition of electoral violence was given as:⁵⁸

Any random or **organized act or threat to intimidate, physically harm, blackmail, or abuse** an electoral stakeholder in seeking to determine, delay, or to otherwise influence the electoral process is a crime of electoral violence.
(Author's emphasis)

This definition is wider and the scope, when applied would sufficiently tackle the issue of electoral violence which continually stifles democratic governance by deterring voter turnout, polarizing communities, and discrediting democracy as an institution.⁵⁹ It may be argued that such acts can be prosecuted under the Criminal or Penal Code. This argument would in any event be prejudicial to the need and essence of electoral justice which places free and fair election at the foundation of a democratic and egalitarian system of government and a harbinger of good governance.

Cases of electoral violence and harassment abound in elections globally.⁶⁰ An alternative study of 110 elections suggest that election day is the most violent day during the election cycle, however 46% of deaths occurred in the phases before election day while 43% occurred after election day.⁶¹

Conceptually, while physical violence is an overt physical bodily attack on a person before or during an election, threat of use of force refers to coercive intimidation during, before or after the election. While the former refers to acts that have taken place, the latter refers to threats or preparatory and prospective actions to distort an election. The Electoral Act, 2022 made provisions of sanction against electoral violence perpetrators in Section 126 and further provided against:

- a. retaining, organizing, training or equipping any person or group of persons for the purpose of enabling them for the use or display of physical force or coercion in

⁵⁷Straus, Scott and C Taylor, *Democratization and Electoral Violence in Sub-Saharan Africa – 1990- 2007*, University of Wisconsin, 2009, p 9.

⁵⁸Fischer and Jeff, *Electoral Conflict and Violence – A Strategy for Study and Prevention*, IFES, 2002, p 8.

⁵⁹ Thematic Workshop: Elections, Violence and Conflict Prevention, The European Commission Joint Task Force on Electoral Assistance, United Nations Development Programme, 2011, page 25.

⁶⁰ In 2001 electoral violence or conflict occurred in 24.5% of elections held worldwide.¹ However when evaluating elections in Sub-Saharan Africa from 1990-2007, 19% of the respective 213 cases experienced repression and prolonged violence while 39% of the cases experienced harassment based crimes.

⁶¹A Philip, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum, Election-related violence and killings, United Nations Human Rights Council, May 21, 2010, p. 7.



- pursuing a political objective or arousing reasonable apprehension of such in other persons⁶² or aiding or abetting the contravention thereof.⁶³
- b. Directly or indirectly threatening any person with use of force or violence during campaigns.⁶⁴

5. Prosecution of Electoral Offences.

Constitutionally based democratic system of representative government only works when the worth of honest ballots is not diluted by invalid ballots procured by illegal means. When the election process is corrupted, democracy is jeopardized. This underscores the need to accord enforcement priority and effective prosecution of corruption of the election process. Although a government that emerged through a free, credible and transparent electoral process may end up being corrupt, government that is a product of election crime is usually corrupt because all election crimes are driven by a motive to control governmental power for some corrupt purpose.

A successful prosecution is dependent on sufficient and effective investigation. An investigation typically involves interviewing the complainant, then conducting a sufficient investigation to:

- a. identify the crime allegedly committed;
- b. determine whether that crime is prosecutable under the electoral law;
- c. identify persons who may have participated in the scheme;
- d. identify, if possible, a few specific fraudulent voting transactions
- e. evaluate the need for prosecution as a function of –
 - i. the extent to which the crime may have impacted adversely on the election,
 - ii. the extent to which the crime corrupted the registration or voting process, and
 - iii. the desire and capability of local law enforcement officials to handle the case;

The most common instances of electoral fraud in Nigeria are:⁶⁵

- a. Compilation of fictitious names on voters' registers
- b. Illegal compilation of separate voters' list
- c. Abuse of voters' registration revision exercise
- d. Illegal possession of ballot boxes
- e. Illegal printing of voters' cards
- f. Stuffing of ballot boxes with ballot papers.
- g. Falsification of election results.
- h. Illegal thumb-printing of ballot papers
- i. Voting by under-age children.
- j. Printing of Form EC8 and EC8A used for collation and declaration of election results.
- k. Deliberate refusal to supply election materials to certain areas.
- l. Announcing results in places where no elections were held.
- m. Unauthorized announcement of election result.
- n. Harassment of candidates' agents and voters.
- o. Change of list of electoral officials.
- p. Box-switching and inflation of figures.

The most frequently recurrent election frauds are absentee ballot fraud and ballot-box stuffing. Strategies for investigating these frauds are similar, but not identical.

⁶² Electoral Act 2022, Section 92(5).

⁶³ Ibid, Section 95(8).

⁶⁴ Ibid, Section 97(1).

⁶⁵ Babalakin Commission of Inquiry (FRN, 1986-290).



6. Challenges to Prosecution of Electoral Offences.

Electoral offences are triable in a Magistrate Court or a High Court of a state in which the offence is committed or at the Federal Capital Territory, Abuja. The prosecution is undertaken by legal officers of the INEC or lawyers appointed by the Commission.⁶⁶ The domiciliation of the power of prosecution in the Commission does not seem to improve the effectiveness in prosecuting electoral offences. The chairman of the Commission had cause to say that they have ‘recorded quite a number of successful prosecutions, even though these are relatively few compared with the large number of offenders.’⁶⁷

During voters registration exercise, the Independent National Electoral Commission detected about 870, 000 cases of multiple registrations which were offences under the Electoral Act, 2010 (as amended) but a negligible few were prosecuted under the law.⁶⁸ One of the reasons for few prosecutions is attributed to the incapacity of the Commission arising from lack of time, the expertise, the resources and the capacity to shoulder such a responsibility in addition to conducting elections and managing post electoral challenges.⁶⁹ In a Report of the Registration and Election Review Committee (RERC) set up by the Independent National Electoral Commission in 2012, the Committee found the need for government to take urgent action to set up the process, including legislation, for the establishment of the Electoral Offences Commission, alongside other measures for the prosecution of electoral offences. The Committee felt that even if the Commission has the resources and capacity to effectively prosecute offenders, it will distract it from the major duties assigned to it under the law.

The security personnel used during elections are assembled from divisions and commands outside many electoral districts and constituencies. Such officers who may have witnessed the irregularities are withdrawn to their bases after the election. Moreover, the security personnel are better trained on investigation of routine offences under the Criminal and Penal Codes. They do not fully understand what constitutes an electoral offence, unless their attention is drawn to it by electoral officers, candidates or agents of political parties, whose instructions they most often loathe to accept.

There are also offences relating to commissions and omissions by officers of the Commission. Prosecution can be compromised in this situation where the Commission is to prosecute its own personnel. Furthermore, despite the clear provision of the Electoral Act giving the power to prosecute to the Commission, conflicts do arise between the institutions responsible for prosecuting crimes at the Federal and state levels on the one hand and the prosecuting unit of the Commission on the other. There could also be clash of interests between the Commission and the Police with regard to prosecution of election offences.⁷⁰

⁶⁶ Electoral Act 2022, Section 145.

⁶⁷ AM Jega, ‘Elections, Democratic Transition and Conflict Management in Africa.’ A keynote address at ‘Managing Conflicts in Africa’, organized by the Centre for Conflict Management, Kennesaw State University, Georgia, USA. on May 13, 2011. 13-14.

⁶⁸ AM Jega, ‘IT in Voter Registration: Nigeria’s Experience.’ A presentation by the Chairman, Independent National Electoral Commission (INEC), Nigeria, at the Biennial Conference of the Commonwealth Electoral Network (CEN) in Toronto, Canada, on 25th June, 2012.

⁶⁹ F Okoye, ‘The Prosecution of Election Offenders in Nigeria: Challenges and Possibilities’ (Friedrich-Ebert Stiftung (FES) 2013) NO. 5, September, 2013 p 25.

⁷⁰ Institute for Democracy in South Africa (IDASA), Enforcement of Electoral Laws and Reduction of Electoral Violence in Nigeria, July 2006



7. Proof of Allegation of Crime in Election Dispute Proceedings.

The age long standard of proof required to establish the commission of crime is proof beyond reasonable doubt. In trying to illustrate the meaning of proof beyond reasonable doubt, Lord Denning M.R said:⁷¹

If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence “of course it is possible but not in the least probable” the case is proved beyond reasonable doubt, but nothing short of that will suffice.

It ceases to be very straightforward where a party does not have a legal burden but an evidential burden to prove the commission of crime. In other words, the allegation sought to be proved is not the fact in issue whose determination would, without any other evidence, determine the winner. Such scenarios abound where there are allegations of crime in civil proceedings. The Evidence Act provides that ‘if the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt.’⁷² The Courts have severally applied the provisions of this section by insisting on proof beyond reasonable doubt whenever an allegation of crime is raised in criminal proceedings.⁷³

By nature, election disputes are *sui generis*. In other words, they are special, unique or of their own kind. This was buttressed in the case of *Orubu v. NEC*⁷⁴ where his Lordship, Uwais CJN (as he then was) succinctly held as follows:

An election petition is not the same as the ordinary civil proceedings. It is a special proceeding because of the nature of elections which, by reason of their importance to the well-being of a democratic society are regarded with aura that places them above the normal day to day transactions between individuals which give rise to ordinary or general claim in court. As a matter of deliberate policy to enhance urgency, election petitions are expected to be devoid of the procedural clogs that cause delay in the disposition of the substantive dispute.⁷⁵

Some technical defects or irregularities which in other proceedings are considered too immaterial to affect the validity of the claim, could be fatal to proceedings in election petitions. Distinct from common law actions, election disputes are strictly regulated by the constitution, laws or regulations which stipulate *inter alia* the procedures that must be followed during an election and the rules that must be complied with in challenging an election.⁷⁶ Moreover, election petitions are neither criminal nor civil proceedings as to attract the application of Section 135(1) of the Evidence Act which provides that proof of allegations of crime in criminal or civil proceedings shall be proof beyond reasonable doubt.

⁷¹*Miller v Minister of Pensions* (1947) 2 All ER 372 at pp 373-4.

⁷² *Ibid*, Section 135(1).

⁷³*Maune v Abdul* (2001) 4 NWLR (Pt 702) p 95; *Agwasim v Ejivumerwehaye* (2001) 9 NWLR (Pt 718) p 398
APC v Obaseki (2021) 37 WRN 1.

⁷⁴ (1988) 5 NWLR (Pt. 94) 323 at 347.

⁷⁵ *Abdulahi v. Elayo* (1993) 1 NWLR 332.

⁷⁶BH Heinberg, “The Resolution of Election Disputes: Legal Principles that Control Election Challenges” 2008 (IFES, Washington DC, USA), p 1.



However, the Evidence Act, 2011 settled the matter by amending Section 135(3) which was hitherto meaningless.⁷⁷ The amendment substituted the subsection to the effect that ‘in election matters, whether the commission of crime is in issue or not, proof shall be on the preponderance of evidence or balance of probabilities.’ This amendment is commendable because a petitioner in an election dispute lacks the evidence-gathering powers available to the Election Monitoring Body. Placing the burden of proof of allegations of crime in an election process by proof beyond reasonable doubt or clear and convincing evidence would create an insurmountable hurdle in many election dispute cases where the petitioner or his witnesses do not have access to the documents and the election personnel.

8. Conclusion

The major stakeholders of the electoral process, excluding the electorate who by law do not have *locus standi* on electoral disputes, concentrate more and only on who won or lost an election. Petitioners file their petitions only on grounds to be declared winner of the election. If any crime was committed in the process of making him lose an election he would have otherwise won, he is not bothered by that. Moreover, the electoral laws do not include allegation of crime as one of the grounds for bringing an election petition.⁷⁸ Furthermore and unfortunately, the Act made a provision to the effect that even if electoral offences or crimes are considerable; they pale into insignificance if their occurrence did not substantially affect the outcome of the election.⁷⁹

Consequently, lawyers who engage in election petitions do not bother to challenge the process that led to the declaration of a winner in an election because of the fear that proof of electoral offences or crimes may not cross the threshold of ‘substantiality requirement’ of Section 135(1) of the Electoral Act. The consequence is that persons who commit electoral offences go unpunished and most often, their patrons benefit from their crimes as long as the crimes ‘did not substantially affect the result of the election.’

9. Recommendations

To combat or reduce the challenges to prosecution of election offences, the government of late President Umaru Musa Yar’adua set up an Electoral Reform Committee headed by Justice Muhammed Uwais to consider options that can aid speedy and effective investigation and prosecution. The Committee recommended that an autonomous and constitutionally recognized Electoral Offences Commission should be established through a bill of the National Assembly to perform the following functions:

- a. Enforcement and administration of the provisions of the Act establishing the Commission;
- b. Investigation of all electoral frauds and related offences;
- c. Coordination, enforcement and prosecution of all electoral offences;
- d. Enforcement of the provision of the Electoral Act 2006, the Constitutions of registered political parties and any other Acts or enactments;
- e. Adoption of measures to identify, trace and prosecute political thuggery, electoral fraud, political terrorism and other electoral offences;
- f. Adoption of measures to prevent and eradicate the commission of electoral malpractices;
- g. Adoption of measures which include but are not limited to coordination, prevention and regulatory actions;

⁷⁷ Prior to the amendment, Section 135(3) provided that ‘if the prosecution proves the commission of a crime beyond reasonable doubt, the burden of proving reasonable doubt shifted to the defendant.’

⁷⁸ Electoral Act, 2022, Section 134(1).

⁷⁹ Ibid, Section 135(1)



- h. Introduction and maintenance of investigative and control techniques towards the prevention of electoral malpractices and fraudulent election;
- i. The facilitation of rapid exchange of scientific and technical information among other democracies on the conduct of joint operation and training, geared towards the eradication of electoral malpractices and fraudulent election;
- j. The examination and investigation of all reported cases of electoral offences with the view to identifying electoral officers and staff of the electoral commission, individuals, corporate bodies or groups involved in the commission of electoral offences; and
- k. Collaboration with election observing authorities within and outside Nigeria.

The Electoral Reform Committee recommended that the composition of the Electoral Offences Commission should be as follows:

1. The Chairman who shall be the Chief Executive Officer and a person of unquestionable character;
2. A Deputy Chairman who shall be a person of unquestionable character;
3. Six Nigerians of unquestionable character, one from each of the six geopolitical zones of the Federation;
4. The Attorney-General of the Federation or his nominee not below the rank of a Director;
5. The Inspector-General of Police or his nominee not below the rank of Assistant Inspector General;
6. The Secretary to the Commission who shall be the head of the administration;

The Electoral Reform Committee recommended that the offences listed in Part VIII of the Electoral Act, 2010 (as amended) shall be transferred to the new Commission with the functions of Legal Officers of the Independent National Electoral Commission transferred to the said Commission. It also recommended the amendment of Sections 174 and 214 of the 1999 Constitution which allows State and Federal Attorney Generals to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person. The amendment would exclude the exercise of such powers in relation to electoral offences. The recommendations of the Justice Uwais Committee have not been implemented. However, in 2016, the government of Muhammed Buhari set up another 25-member Constitution and Electoral Reform Committee (CERC) which made recommendations similar to those of the Uwais Committee.

As usual and in absurd character of the Nigerian polity, the reports, like millions of other reports is somewhere in cupboards of government. The author however adopts the recommendations in this paper.